

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 2

**DOCKET NO.:** 2007-0545-AGR-E **TCEQ ID:** RN102073137 **CASE NO.:** 33137**RESPONDENT NAME:** Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Vanden Berge Dairy Farm, 2345 County Road 177, Erath County</p> <p><b>TYPE OF OPERATION:</b> Dairy farm</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 3, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> <b>TCEQ Attorney/SEP Coordinator:</b> None <b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 149; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 <b>Respondent:</b> Mr. Jack Edwin Vanden Berge, Owner, Vanden Berge Dairy Farm, 400A Morgan Mill Road, Stephenville, Texas 76401 <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

## VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 13, 2007</p> <p><b>Date of NOE Relating to this Case:</b> March 30, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation. One violation was documented.</p> <p><b>WATER</b></p> <p>Failure to develop and operate under a Comprehensive Nutrient Management Plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondent failed to respond to requests for additional information from the TSSWCB and the TCEQ [30 TEX. ADMIN. CODE § 321.42(s)].</p>	<p><b>Total Assessed:</b> \$3,420</p> <p><b>Total Deferred:</b> \$684  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,736</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on April 20, 2007, Mr. Vanden Berge began operating under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB").</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

**TCEQ**

**DATES**

Assigned  
PCW

2-Apr-2007  
27-Apr-2007

Screening

5-Apr-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm  
Reg. Ent. Ref. No. RN102073137  
Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 33137  
Docket No. 2007-0545-AGR-E  
Media Program(s) Water Quality  
Multi-Media

No. of Violations 1  
Order Type 1660  
Enf. Coordinator Thomas Jecha  
EC's Team Enforcement Team 4

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

Subtotal 1 \$2,000

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 81% Enhancement Subtotals 2, 3, & 7 \$1,620

Notes Enhancement for one same or similar and six dissimilar NOVs and two Orders with a denial of liability and one without for this site within the past five years. Credit is also given for one audit NOI.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction Subtotal 5 \$200

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent achieved compliance on April 20, 2007.

Total EB Amounts \$151  
Approx. Cost of Compliance \$10,000  
0% Enhancement\* Subtotal 6 \$0  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7**

Final Subtotal \$3,420

## OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment \$0

Notes

Final Penalty Amount \$3,420

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$3,420

## DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

20% Reduction Adjustment -\$684

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY**

\$2,736

Screening Date 5-Apr-2007

Docket No. 2007-0545-AGR-E

PCW

Respondent Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm

Policy Revision 2 (September 2002)

Case ID No. 33137

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102073137

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	6	12%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 81%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement for one same or similar and six dissimilar NOV's and two Orders with a denial of liability and one without for this site within the past five years. Credit is also given for one audit NOI.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 81%

Screening Date 5-Apr-2007

Docket No. 2007-0545-AGR-E

PCW

Respondent Jack Edwin Vanden BERGE dba Vanden BERGE Dairy Farm

Policy Revision 2 (September 2002)

Case ID No. 33137

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102073137

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 321.42(s)

Violation Description

Failed to develop and operate under a Comprehensive Nutrient Management Plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondent failed to respond to requests for additional information from the TSSWCB and the TCEQ.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 2

59 Number of violation days

mark only one  
with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two monthly events are recommended from the February 5, 2007 deadline to submit requested information to the TSSWCB until the April 5, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$151

Violation Final Penalty Total \$3,420

This violation Final Assessed Penalty (adjusted for limits) \$3,420

## Economic Benefit Worksheet

**Respondent:** Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm  
**Case ID No.:** 33137  
**Reg. Ent. Reference No.:** RN102073137  
**Media:** Water Quality  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$10,000	31-Dec-2006	20-Apr-2007	0.3	\$151	n/a	\$151
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement a CNMP from the date the plan was required to be certified and implemented until the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$151

# Compliance History

Customer/Respondent/Owner-Operator: CN601119431 VANDEN BERGE, JACK EDWIN Classification: AVERAGE Rating: 30.36  
Regulated Entity: RN102073137 VANDEN BERGE DAIRY FARM Classification: AVERAGE Site Rating: 30.36  
ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0003184000  
Location: 2345 COUNTY ROAD 177, ERATH COUNTY Rating Date: 9/1/2006 Repeat Violator: NO  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: April 17, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 02, 2002 to April 02, 2007  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Thomas Jecha Phone: 512-239-2576

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A Effective Date: 07/21/2002 ADMINORDER 2001-0955-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 321, SubChapter B 321.31(a)

TWC Chapter 26 26.121

Rqmt Prov: V PERMIT

Description: Failure to prevent a unauthorized discharge of wastewater from a waste control pond.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.42(a)[G]

Description: Failure to provide a written notification of the discharge including a description of the cause, estimated flow and flow path, period of discharge, and sample analysis results.

Effective Date: 03/20/2003

ADMINORDER 2002-0797-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(4)

30 TAC Chapter 305, SubChapter F 305.125(5)

30 TAC Chapter 321, SubChapter B 321.31(a)

TWC Chapter 26 26.121

Rqmt Prov: Sect V PERMIT

Description: Failure to prevent an unauthorized discharge.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(11)

Rqmt Prov: Sect V PERMIT

Description: Failure to maintain adequate waste storage pond level logs.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(24)(B)

Rqmt Prov: Sect V PERMIT

Description: Failure to provide containment structures for manure stockpiles.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.40(1)

Rqmt Prov: Sect V PERMIT

Description: Failure to construct, operate and maintain facilities to contain the runoff from a 25 yr, 24 hr rainfall event.

Effective Date: 11/26/2004

ADMINORDER 2004-0025-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)

Rqmt Prov: (V) OP

Description: Failure to prevent the discharge of wastewater adjacent to waters of the State from the retention control structure.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(11)

Rqmt Prov: (V) OP

Description: Failure to maintain adequate storm water storage capacity in the retention control

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/22/2002	(7926)
N/A		
2	02/14/2003	(8534)
3	06/27/2003	(60425)
4	07/18/2003	(112546)
5	11/12/2003	(253175)
6	02/03/2004	(261439)
7	03/31/2004	(264838)
8	05/26/2004	(267658)
9	05/31/2005	(393350)
10	01/05/2006	(437265)
11	03/13/2006	(458551)
12	05/25/2006	(479869)
13	11/10/2006	(514519)
14	01/03/2007	(533386)
15	03/29/2007	(543901)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date	08/15/2002	(7926)	
Self Report?	NO		Classificatio Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(11)		
Description:	Failure to maintain storm water storage capacity and to restore capacity after rainfall events.		
Self Report?	NO		Classificatio Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(18)		
Description:	Failure to prevent trees from growing on the embankment of the waste storage pond.		
Self Report?	NO		Classificatio Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.38		
Description:	Failure to document all best management practices in the pollution prevention plan.		
Self Report?	NO		Classificatio Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.39(d)		



Description: Failure to develop and maintain on-site an adequate pollution prevention plan.  
Date 07/18/2003 (112546)  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(12)  
Description: Failure to provide a permanent marker to show the volume required for a 25-year, 24-hour rainfall event.  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(11)  
Description: Failure to restore storm water storage capacity after the accumulation of solids reduced that available capacity.  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.41(c)  
Description: Failure to include documentation regarding a discharge that occurred in March 2002 in the pollution prevention plan.  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.42(j)  
Description: Failure to submit soil analysis results to the TCEQ within 60 days of the date the samples are collected for analysis.  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(J)(i)

Description: Failure to include all required information in the waste and wastewater application records.  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(28)(C)  
Description: Failure to take soil samples from each land management unit owned, operated or controlled by this Regulated Entity and utilized for waste and/or wastewater application.  
Date 11/07/2003 (253175)  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(12)  
Description: Failure to provide a permanent marker to show the volume required for a 25-year, 24-hour rainfall event.  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(11)  
Description: Failure to restore storm water storage capacity after the accumulation of solids reduced that available capacity.  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.42(j)  
Description: Failure to submit soil analysis results to the TCEQ within 60 days of the date the samples are collected for analysis.  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(J)(i)  
Description: Failure to include all required information in the waste and wastewater application records.  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(28)(C)  
Description: Failure to take soil samples from each land management unit owned, operated or controlled by this Regulated Entity and utilized for waste and/or wastewater application.

Date 05/27/2005 (393350)  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.40(1)  
Description: Failure to maintain an associated area to retain all contaminated rainfall  
Date 03/10/2006 (458551)  
Self Report? NO Classification Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(D)  
Description: Failure to prevent ponding, puddling, or nuisance conditions in the  
Self Report? NO Classification Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)  
Description: Failure to maintain all ponds, pipes, ditches, pumps, and diversion & irrigation equipment.  
Self Report? NO Classification Moderate

Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(12)	
Description:	Failure to have a permanent marker installed on the retention basin(s) showing the 25-year, 24-hour rainfall volume and visible from the top of	
Date	05/26/2006	(479869)
Self Report?	NO	Classifica Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(19)(C)	
Description:	Irrigation was conducted when the ground was saturated and during a rainfall event.	
Date	11/10/2006	(514519)
Self Report?	NO	Classifica Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(24)(B)	
Description:	Failure to maintain all stockpiles in well drained areas with steep sides & runoff retained.	

F. Environmental audits.

Notice of Intent (11/3/03) (263053)  
No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING**

**JACK EDWIN VANDEN BERGE DBA  
VANDEN BERGE DAIRY FARM  
RN102073137**

§  
§  
§  
§  
§

**BEFORE THE**

**TEXAS COMMISSION ON**

**ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0545-AGR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm ("Mr. Vanden Berge") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Vanden Berge appear before the Commission and together stipulate that:

1. Mr. Vanden Berge owns and operates a dairy farm at 2345 County Road 177 in Erath County, Texas (the "Facility").
2. Mr. Vanden Berge has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Mr. Vanden Berge agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Vanden Berge is subject to the Commission's jurisdiction.
4. Mr. Vanden Berge received notice of the violations alleged in Section II ("Allegations") on or about April 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Vanden Berge of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Three Thousand Four Hundred Twenty Dollars (\$3,420) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Vanden Berge has paid Two Thousand Seven Hundred Thirty-Six Dollars (\$2,736) of the administrative penalty and Six Hundred Eighty-Four Dollars (\$684) is deferred contingent upon Mr. Vanden Berge's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Vanden Berge fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Vanden Berge to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Vanden Berge have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on April 20, 2007, Mr. Vanden Berge began operating under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB").
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Vanden Berge has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, Mr. Vanden Berge is alleged to failed to develop and operate under a CNMP certified by the TSSWCB, in violation of 30 TEX. ADMIN. CODE § 321.42(s), as documented during an investigation conducted on March 13, 2007. Specifically, a CNMP was submitted to the TSSWCB for review, but Mr. Vanden Berge failed to respond to requests for additional information from the TSSWCB and the TCEQ.

## **III. DENIALS**

Mr. Vanden Berge generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Vanden Berge pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Vanden Berge's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm, Docket No. 2007-0545-AGR-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Vanden Berge. Mr. Vanden Berge is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Vanden Berge in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Vanden Berge, or three days after the date on which the Commission mails notice of the Order to Mr. Vanden Berge, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.





## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John S. Davis*  
For the Executive Director

8/23/2007  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Jack Vanden Berge*  
Signature

6/14/07  
Date

JACK VANDEN BERGE  
Name (Printed or typed)  
Authorized Representative of  
Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm

OWNER  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

*Filed  
JB  
att  
6-11-07  
9:20  
am*

